

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Insurance Producer's License of Roseann Wagner; and	FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATIONS
In the Matter of the Notary Commission of Roseann Wagner; and	
In the Matter of the Insurance Agency License of Tri-Star Title, Inc.	

This matter came on for hearing before Administrative Law Judge (ALJ) Richard C. Luis at the Office of Administrative Hearings in St. Paul on March 12, 2009. Michael J. Tostengard, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Department, DOC). Roseann Wagner appeared on her own behalf, without counsel. The record closed at the conclusion of the hearing on March 12, 2009.

STATEMENT OF ISSUE

Whether it is appropriate to take disciplinary action against the insurance producer's license of Roseann Wagner, and against the notary commission of Roseann Wagner, and against the insurance agency license of Tri-Star Title, Inc. (Tri-Star) because of Ms. Wagner's improper conversion of monies, fraudulent, coercive and dishonest practices that demonstrate unworthiness and financial irresponsibility, comingling of funds with the trust funds of another and deceptive practices, in violation of applicable subdivisions of Minn. Stat. §§ 60K.43, 82.35, and 82.41?

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On April 28, 2008, at the same time the Notice and Order for Hearing was issued, the Commissioner of Commerce imposed a Summary Suspension on Roseann Wagner's Insurance Producer's License, on her Notary Commission, and on the Insurance Agency Licensure of Tri-Star, pending the final outcome of this proceeding.

2. Respondent Roseann Wagner, who is licensed as an insurance producer and has a notary commission, and who is the owner and operator of Tri-Star Title, Inc., appeared at the hearing and stipulated that she does not contest the Allegations in the Statement of Charges, issued as part of the Notice of and Order for Hearing in this matter on April 28, 2008.

3. Pursuant to the ALJ's Scheduling Order, the Department filed Exhibits 1-23 on March 5, 2009. Those Exhibits are admitted to the record.

4. As part of agreeing not to contest the Allegations, Ms. Wagner reserved her right to file written argument regarding the appropriate level(s) of discipline against her Insurance Producer's License, her Notary Commission, and the Insurance Agency License of Tri-Star Title.

5. This Report contains a "Notice" section, which Notice reminds Ms. Wagner of the opportunity to file exceptions to any of the Findings or Conclusions in this report. Counsel for the Department noted also that the Office of the Commissioner of Commerce, prior to issuing a Final Decision in these matters, will send a letter to the Department staff and to Ms. Wegner, affording both sides the opportunity to file remarks or arguments regarding the appropriate level(s) of discipline.

6. The Allegations in the Statement of Charges are summarized below:

- (1) The Respondent, Roseann Wagner, is licensed as an insurance producer by the Department, holding license number 55467. She also has a notary commission, number 6172530, and owns and operates Respondent Tri-Star Title, Inc., which has insurance agency license number 40072335; and
- (2) In March 2008, the Department received information that Respondent Wagner had been engaged in illegal activities involving misappropriation of escrow funds held in the escrow account of Tri-Star. The Department's investigation revealed that Wagner misappropriated \$477,831.98 from Tri-Star's escrow account. On at least 23 separate occasions, she wired funds from Tri-Star's escrow account to her personal checking account, in a total amount of over \$385,000.00. The funds so wired were not related to any particular closing and were in addition to the ordinary fees Tri-Star would receive for performing its title services. Wagner also misappropriated \$20,700.00 from the Tri-Star recording account and \$38,790.00 from the remittance account to Tri-Star's operating account, which funds later were wired from the operating account to Wagner's personal bank account. Wagner also misappropriated \$5,000.00

directly from the remittance account to her personal account;
and

- (3) On December 4, 2007, Respondent Wagner transferred \$15,000.00, which Tri-Star had deposited as earnest money in a trust account for the benefit of Glory to Glory Christian Center, into her company's remittance account and, subsequently, to her personal account;
- (4) On March 17, 2008, Stewart Title Guaranty Company, the underwriter for Respondent Tri-Star, obtained a temporary restraining order freezing Tri-Star's escrow account and terminating its agency agreement. To date, the Department's investigation has revealed a total of 31 instances in which Wagner misappropriated funds from the Tri-Star accounts;
- (5) From January 2007 to the present, Roseann Wagner withdrew \$98,000.00 in cash from Mystic Lake Casino, either by cash withdrawals at ATMs located within the Casino, or by writing checks to "cash" and endorsed by Mystic Lake Casino.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027, 60K.43 and 82.35.
2. The Department has given proper notice of the hearing in this matter and has fulfilled all procedural requirements.
3. Since Respondent Roseann Wagner has agreed not to contest the Allegations in the Notice of and Order for Hearing, and in the Statement of Charges, those Allegations are taken as true.
4. The uncontested Allegations in the Notice of and Order for Hearing and Statement of Charges, as supported factually in the Department's Exhibits, demonstrate that it is appropriate to take disciplinary action against the Insurance Producer's License of Roseann Wagner, against the Notary Commission of Roseann Wagner, and against the Insurance Agency License of Tri-Star Title, Inc.
5. The Respondents have violated Minn. Stat. §§ 60K.43, subds. 1(4) and 1(8), 82.35, subds. 1(b) and 1(c), and 82.41, subd. 13(12).
6. The taking of the disciplinary action(s) noted in Conclusion 4 are in the public interest, within the meaning of Minn. Stat. § 45.027, subd. 7(c)(1).

Based on the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATIONS

IT IS RECOMMENDED that the Commissioner of Commerce take appropriate disciplinary action against the Insurance Producer's License of Roseann Wagner, the Notary Commission of Roseann Wagner, and the Insurance Agency License of Tri-Star Title, Inc.

IT IS RECOMMENDED FURTHER that the Summary Suspension imposed in this matter on April 28, 2008 be continued until a final agency decision is issued.

Dated: March 30th, 2009

/s/ Richard C. Luis

RICHARD C. LUIS

Administrative Law Judge

Reported: Digitally Recorded
No Transcript

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Glenn Wilson, Commissioner, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.